IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9128 OF 2005

Bagaram Harling Gurav .. Petitioner
Versus
Smt.Asha Anant Gurav & Ors. .. Respondents

Mr.Sanjay Kshirsagar for petitioner

CORAM : S.C.DHARMADHIKARI, J.
DATE : 13th February 2006.

P.C.

. Heard Mr.Kshirsagar for petitioner, who is aggrieved by an order passed by the trial court allowing Exh.131 in Regular Civil Suit No.37 of 1998.

2. Exh.131 is an application for amendment preferred by the original plaintiff.

3. With the assistance of Mr.Kshirsagar I

have perused the application for amendment. Applicant seeks to incorporate certain pleas and reliefs based thereon. The trial court has taken note of the objections raised by petitioner - defendant to the amendment. Trial Court has observed that the amendment does not change the cause of action. Trial court has also, in my view, rightly rejected the objection to the application for amendment raised in the light of amendments to the C.P.C.

4. The only objection now raised before me by Mr.Kshirsagar is that by incorporation of the pleas and reliefs based thereupon, a valuable right conferred upon petitioner - defendant based on the plea of limitation is taken away. In my view, there is no substance in this contention. The prayer made in the suit based upon the averments with regard to the details of the structure being allowed to be incorporated does not mean that the relief itself is granted. The

issue of limitation can be specifically kept open and subject to the pleas to be raised by both sides, amendments can be allowed, is the settled principle. Therefore, by mere permission to incorporate the pleas defence of limitation raised by the petitioner defendant cannot be taken away. Amendment is allowed specifically keeping alive the said plea and it would be open for petitioner as also respondents to urge that the claim is time barred or that it is within limitation. Such pleas would be considered on their own merits and independently of the order under challenge.

5. No reason to interfere under Article 227 of the Constitution of India in the light of the above clarification. Petition dismissed.

(S.C.DHARMADHIKARI, J)